



UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gorringer *et al.*

Appl. No. 09/763,750

§ 371 date: June 4, 2001

For: **Superoxide Dismutase as a
Vaccine Antigen**

Confirmation No. 1196

Art Unit: 1645

Examiner: Ford, V.L.

Atty. Docket: 1581.0780000/RWE

#14
JW
4/16/02

Reply To Restriction Requirement

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Commissioner for Patents
Washington, D.C. 20231

Sir:

The following is in reply to the Office Action dated December 4, 2001 (Paper No. 9), requesting an election of one invention to prosecute in the above-referenced patent application.

Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1-5, 6-8, 10-13 and 15-17. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. This election is made with traverse.

The Examiner alleges that Group I lacks novelty as being anticipated by Japanese Patent No. 04327541A ("Nippon"). Therefore, the Examiner states that Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1, because they lack the same or corresponding special technical features. Applicants respectfully disagree.

The elected invention relates to a pharmaceutical composition which comprises *bacterial* Cu,Zn-superoxide dismutase (SOD) (claims 1-5) or a plurality of *bacterial* Cu,Zn-

SODs (claims 15-17), a vaccine comprising a *bacterial* Cu, Zn-SOD (claims 6-8), and a pharmaceutical preparation comprising an antibody to a Cu,Zn-SOD, or a fragment, derivative or variant thereof (claims 10-13). Thus, the claimed compositions and vaccines are useful for eliciting an immunogenic response to the SOD. Quite contrary to the present invention, Nippon discloses recombinant *human* SOD and administration thereof to a human specifically to suppress an immune response. Thus, while Nippon teaches the use of human SOD to destroy superoxide radicals, and thereby dampen the immune response, the present invention teaches the use of bacterial SOD to elicit antibodies against SOD for vaccination purposes. Based on the above distinction, Applicants respectfully assert that Nippon does not anticipate the invention as claimed in Group I and that, therefore, Groups I-V relate to a single general inventive concept under PCT Rule 13.1.

Further, MPEP 803 (August 2001, page 800-4) sets out one of the criteria for a restriction as: "There must be a serious burden on the Examiner if restriction is required. . . ." In the present case, Applicants respectfully assert that the search of more than one restriction group does not impose a serious burden upon the Examiner.

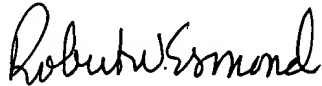
Applicants respectfully request that all claims of Groups I-VI be examined together. Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time

are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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